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BY ECF

Hon. Alvin K. Hellerstein
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: United States v. Sung Kook (Bill) Hwang, et al., No. 22 Cr. 240 (AKH)

Dear Judge Hellerstein:

On behalf of defendant Bill Hwang, we respectfully write to raise with the Court our request to question the prosecution's expert witness, Dr. Carmen Taveras, about her involvement in the SEC's investigation of and resolution with Morgan Stanley concerning information leaks by the bank in connection with block trading during the time it was a counterparty of Archegos. We believe that such inquiry is relevant and necessary for the defense to establish the legitimate reasons why Mr. Hwang and Archegos sought to maintain the secrecy of their positions, in order rebut the implication of Dr. Taveras's testimony that Archegos used secrecy in order to facilitate manipulation. Such purpose is in line with the Court's commentary at the Pretrial Conference that "I think there's no issue" with the defense eliciting expert testimony about front-running by counterparties (such as Morgan Stanley) in order "to rebut the government's arguments that there is something wrong with this sort of secrecy or with using multiple counterparties." Pretrial Conf. Tr. 73:16-74:4 (Apr. 11, 2024).

In addition, such inquiry is necessary to explain the factors relevant to the precipitous drop in Archegos's portfolio during its final week that prosecution witnesses from other banks have characterized as being caused, in part, by a "fire sale" of those positions. The Morgan Stanley desk that was the subject of the SEC resolution for information leaking and front-running in connection with its block sale practices executed such block trades for Archegos during its final week in March 2021.

A block trade is an "arranged trade" where the "capital markets team" at a bank facilitates a sale of a large block of stock to an "institutional client[]" "at a specific price at a discount to the previous night's close." Trial Tr. 1578:8-17 (May 28, 2024) (Testimony of Josh Lukeman). Such a trade can allow a seller to sell a large block of stock more quickly and

efficiently than if it sought to execute the trade on an exchange. Unfortunately, however, when news leaks that a seller is considering a large block sale of a particular stock, that itself can depress the price of the stock because short sellers may seek to profit off of the news. *Id.* at 1616:3-18.

Between March 23 and March 26, 2021, Archegos did a number of block sales of stock through Morgan Stanley, including a sale of approximately \$150 million of GSX on March 23, and a sale of nearly \$5 billion on March 25, and was discussing other block trades as well. Trial Tr. 1349:18-1350:7 (May 23, 2024) (Testimony of Scott Becker). Several Archegos counterparties also executed block sales to begin unwinding Archegos's positions. *See, e.g.*, Trial Tr. 1577:17-1579:3 (May 28, 2024) (Credit Suisse); Trial Tr. 1745:23-1746:2 (May 29, 2024) (Goldman Sachs). As news of these block sales began to leak to the market, the prices of the securities involved began to decline "quite substantially." Trial Tr. 1616:3-9 (Josh Lukeman, formerly of Credit Suisse).

On January 12, 2024, the SEC announced a roughly \$249 million settlement with Morgan Stanley related to fraud in its block-trading practices from June 2018 to August 2021. According to the SEC's press release, "[d]espite assuring shareholders that they would keep their efforts to sell large blocks of stock confidential, Morgan Stanley . . . instead leaked that material non-public information to mitigate their own risk, win more block trade business, and generate over a hundred million dollars in illicit profits."¹ The SEC's press release identified Dr. Taveras as the lead member of the agency's Division of Economic and Risk Analysis on the investigation team. *Id.*

Documents in discovery indicate that Archegos was one of the block-trading sellers during the time Morgan Stanley was engaged in its illegal block-trading practices. The SEC resolution indicates that Morgan Stanley was engaged in this information leaking during the time it was a counterparty of Archegos and executed block trades on its behalf. In addition, a call recording produced by the prosecution (and obtained from the Morgan Stanley investigation) captures a Citadel executive telling a Morgan Stanley executive: "**You took out Bill Hwang with the Viacom.**" SDNY_004_0000_1120, Audio Recording (July 28, 2021). The Morgan Stanley executive replied, "Yeah." *Id.* That same Morgan Stanley executive had business dealings with Archegos during the indictment's time frame. And, as trial testimony has shown, there were concerns of a "fire sale" causing prices for Archegos's swap positions to drop precipitously in its final week. Trial Tr. 325:19-326:6 (May 14, 2024) (Testimony of Brian Fairbanks, formerly of UBS); *see also* Trial Tr. 1616:3-9 (Josh Lukeman, formerly of Credit Suisse). Dr. Taveras, as a lead member of the SEC's Morgan Stanley investigation team, is no doubt intimately familiar with these events.

The prosecution, however, has elicited testimony from Dr. Taveras plainly suggesting to the jury that Archegos's particular use of swaps that do not need to be disclosed is out of the ordinary and thus evidence of manipulative intent. Dr. Taveras testified that Archegos built large positions in swaps that it did not have to publicly disclose. Trial Tr. at 2082:23-2083:8 (May 30, 2024) (Taveras). Indeed, Dr. Taveras testified that she has never in her time at the SEC seen someone establish a non-public swap position as large as Archegos did, noting "it is rare . . . to

¹ <https://www.sec.gov/news/press-release/2024-6>.

see such a great concentration when you don't have controlling ownership of a public company." Trial Tr. 2054:10-2055:4 (Taveras). She added that she has not "seen such frequent buying at such high volumes." Trial Tr. 2075:24-2076:1 (Taveras). Dr. Taveras also is expected to testify today regarding Archegos's final week and the price movements of its portfolio, including on the days of Morgan Stanley's block trading on Archegos' behalf discussed above.

In order to rebut the clear implication of Dr. Taveras's testimony that Archegos used non-disclosed swaps to facilitate manipulation and her anticipated testimony regarding the price drop of Archegos's portfolio during its final week, the defense should be permitted to cross-examine Dr. Taveras on the legitimate reasons why Archegos might seek to maintain the secrecy of its positions and the factors that could have contributed to the decline of Archegos's portfolio during the final week. This includes the risk of information leaking and front-running by Morgan Stanley and its potential impact on the prices of Archegos's swap positions, a topic Dr. Taveras knows well from her experience investigating Morgan Stanley for doing exactly that, leaking information in connection with its block trading during this very time period.

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For the foregoing reasons, Mr. Hwang respectfully requests that the Court permit the defense to cross-examine Dr. Taveras about the SEC's investigation of and resolution with Morgan Stanley for its information leaking and front-running in connection with its block-trading practices during the time it was a counterparty of Archegos and executed block trades on its behalf.

Respectfully submitted,

/s/ Barry H. Berke

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cc: Counsel of record